

Final Agency Determination: FAD-292

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Subject: Two requests dated January 23, 2020, and February 13, 2020, to the Risk Management Agency (RMA) requesting a Final Agency Determination for the 2017 crop year regarding the interpretation of section 20(a) and (b)(1) and (2) of the Common Crop Insurance Policy Basic Provisions (Basic Provisions), published at 7 C.F.R. § 457.8. This request is pursuant to 7 C.F.R. § 400, subpart X.

Background:

The Basic Provisions states, in relevant part:

Throughout this policy, “you” and “your” refer to the named insured shown on the accepted application and “we,” “us,” and “our” refer to the insurance company providing insurance. Unless the context indicates otherwise, use of the plural form of a word includes the singular and use of the singular form of the word includes the plural.

1. Definitions.

Insured - The named person as shown on the application accepted by us. This term does not extend to any other person having a share or interest in the crop (for example, a partnership, landlord, or any other person) unless specifically indicated on the accepted application.

2. Life of Policy, Cancellation, and Termination

(j) Any person may sign any document relative to crop insurance coverage on behalf of any other person covered by such a policy, provided that the person has a properly executed power of attorney or such other legally sufficient document authorizing such person to sign. You are still

responsible for the accuracy of all information provided on your behalf and may be subject to the consequences in section 6(g), and any other applicable consequences, if any information has been misreported.

20. Mediation, Arbitration, Appeal, Reconsideration, and Administrative and Judicial Review.

(a) If you and we fail to agree on any determination made by us except those specified in section 20(d) or (e), the disagreement may be resolved through mediation in accordance with section 20(g). If resolution cannot be reached through mediation, or you and we do not agree to mediation, the disagreement must be resolved through arbitration in accordance with the rules of the American Arbitration Association (AAA), except as provided in sections 20(c) and (f), and unless rules are established by FCIC for this purpose. Any mediator or arbitrator with a familial, financial or other business relationship to you or us, or our agent or loss adjuster, is disqualified from hearing the dispute.

(b) Regardless of whether mediation is elected:

(1) The initiation of arbitration proceedings must occur within one year of the date we denied your claim or rendered the determination with which you disagree, whichever is later;

(2) If you fail to initiate arbitration in accordance with section 20(b)(1) and complete the process, you will not be able to resolve the dispute through judicial review;

28. Transfer of Coverage and Right to Indemnity.

If you transfer any part of your share during the crop year, you may transfer your coverage rights, if the transferee is eligible for crop insurance. We will not be liable for any more than the liability determined in accordance with your policy that existed before the transfer occurred. The transfer of coverage rights must be on our form and will not be effective until approved by us in writing. Both you and the transferee are jointly and severally liable for the payment of the premium and administrative fees. The transferee has all rights and responsibilities under this policy consistent with the transferee's interest.

29. Assignment of Indemnity.

(a) You may assign your right to an indemnity for the crop year only to creditors or other persons to whom you have a financial debt or other

pecuniary obligation. You may be required to provide proof of the debt or other pecuniary obligation before we will accept the assignment of indemnity.

(b) All assignments must be on our form and must be provided to us. Each assignment form may contain more than one creditor or other person to whom you have a financial debt or other pecuniary obligation.

(c) Unless you have provided us with a properly executed assignment of indemnity, we will not make any payment to a lienholder or other person to whom you have a financial debt or other pecuniary obligation even if you may have a lien or other assignment recorded elsewhere. Under no circumstances will we be liable:

(1) To any lienholder or other person to whom you have a financial debt or other pecuniary obligation where you have failed to include such lienholder or person on a properly executed assignment of indemnity provided to us; or

Section 509 of the Federal Crop Insurance Act (Act) (7 U.S.C. § 1509) states:

INDEMNITIES EXEMPT FROM LEVY

SEC. 509. 7 U.S.C. 1509 Claims for indemnities under this subtitle shall not be liable to attachment, levy, garnishment, or any other legal process before payment to the insured or to deduction on account of the indebtedness of the insured or the estate of the insured to the United States except claims of the United States or the Corporation arising under this subtitle.

7 C.F.R. § 457.8 states, in relevant part:

§ 457.8 The application and policy.

If a producer has a properly executed Power of Attorney on file with the insurance provider, such Power of Attorney will remain in effect under the Common Crop Insurance Policy Basic Provisions until it is terminated.

2017 General Standards Handbook paragraph 855 states, in relevant part:

Paragraph 855 Power of Attorney

Insureds may grant a third-party the authority to sign crop insurance documents on their behalf if a legally executed POA is provided to the AIP. The person authorized to sign is the attorney-in-fact.

B. POA Requirements

(1) Authority POAs which grant authority to sign contracts and legally bind the grantor(s) are sufficient for crop insurance purposes. The POA must specify the person authorized, the period of authorization, and powers granted.

Interpretation Submitted

Two interpretations were submitted in this FAD request:

First requestor's interpretation:

The first requestor interprets section 20(a) and (b)(1) and (2) of the Basic Provisions to mean that all rights and obligations of an insured under a federally reinsured crop insurance policy are reserved exclusively to the insured named on the accepted application, including the right and obligation to initiate an arbitration relating to determinations made by the approved insurance provider (AIP) and the right to seek and collect any indemnities which may be owed. The Basic Provisions defines "you" as only the named insured shown on the accepted application. Further, "Insured" is defined in the Basic Provisions as the named person as shown on the application accepted by us and specifically excludes "any other person having a share or interest in the crop ... unless specifically indicated on the accepted application."

Section 855 of the 2017 General Standards Handbook (FCIC-18190) allows an insured to grant a third-party (the "Attorney-in-Fact") the authority to sign crop insurance documents on their behalf if a legally sufficient and properly executed Power of Attorney (POA) is provided to the AIP. However, a POA does not give the Attorney-in-Fact any rights or interests in the policy, including, but not limited to, the right to be paid an indemnity or the right to file a demand or prosecute the insured's claims in arbitration.

Section 509 of the Act expressly precludes a party, including an Attorney-in-Fact, from initiating or prosecuting any legal process, including arbitration, on its own behalf in an attempt to collect indemnities that may otherwise be due to a policyholder. Rights and interests in the policy can only be transferred or assigned to a third party in compliance with section 28 and 29 of the Basic Provisions.

Second requestor's interpretation:

The second requestor contends that a plain reading of section 20 allows for a party to initiate an arbitration claim via a duly granted Power of Attorney as long as those claims are initiated within one year of the date the claim was denied, or the challenged determination was rendered. The first requestor contends that the arbitration proceedings must be dismissed because, although timely initiated, they were initiated in the name of the Attorney-in-Fact under Power of Attorney executed by each of the policyholders, rather than in the name of the policyholder. There is no statement or reference in section 20 that supports the first requestor's interpretation.

Section 20 requires that "the disagreement must be resolved through arbitration" and that "[t]he initiation of arbitration proceedings must occur within one year of the date we denied your claim" In order to comply with section 20, the initiation of arbitration proceedings occurred, within the one year window to commence these arbitration proceedings.

Section 20 does not contain an additional unstated requirement that the arbitration proceedings commenced within one year must also be commenced in the name of the policyholder (and not simply on their behalf). The first requestor's position above implies that section 20 includes language such as "You must initiate arbitration proceedings in your name within one year" (which it does not), rather than the actual language of section 20, which simply states that "the initiation of arbitration proceedings must occur within one year." Section 20 specifically states that (and only that) "the disagreement must be resolved through arbitration" (which occurred) and that "[t]he initiation of arbitration proceedings must occur within one year" (which also occurred). The arbitration proceedings were timely initiated. Nothing in section 20 precludes the Attorney-in-Fact from initiating these arbitration claims using a Power of Attorney issued by the policyholder. Nothing in section 20 prohibits or excludes this action.

Final Agency Determination

Section 2 of the Basic Provisions states that a power of attorney may grant authority to a person (Attorney-in-Fact) to sign any document on the named insured's behalf. Therefore, arbitration proceedings may be initiated through a document signed by the insured's Attorney-in-Fact. However, the arbitration must be for the named insured, not for the Attorney-in-Fact.

In accordance with 7 C.F.R. § 400.766(b)(2), this Final Agency Determination is binding on all participants in the Federal crop insurance program for the crop years the policy provisions are in effect. Any appeal of this decision must be in accordance with 7 C.F.R. § 400.766(b)(5).

Date of Issue: March 13, 2020